

Margaret A. Coulter (CA Bar No. 304708)
Lauren A. Parker (DC Bar No. 1670885)
Pro hac vice admission pending
Jason Rylander (DC Bar No. 474995)
Pro hac vice admission pending
CENTER FOR BIOLOGICAL DIVERSITY
1411 K Street NW, Suite 1300
Washington, DC 20005
Telephone: (202) 961-4820

Attorneys for Plaintiff Center for Biological Diversity

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL
DIVERSITY

Plaintiff,

v.

DEB HAALAND, Secretary of the Interior,
in her official capacity; and

MARTHA WILLIAMS, Director,
U.S. Fish & Wildlife Service, *in her*
official capacity,

Defendants.

No. 1:22-cv-00335-DAD-BAK

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' STATEMENT OF
UNDISPUTED FACTS**

Pursuant to Local Rule 260(b), Plaintiff submits the following Response to Defendants' Statement of Undisputed Facts, ECF No. 21. Below, Plaintiff has reproduced the numbered paragraphs from Defendants' Statement of Undisputed Facts and provides Plaintiff's response.

RESPONSE TO DEFENDANTS' STATEMENT OF UNDISPUTED FACTS

	Defendants’ Undisputed Fact	Plaintiff’s Response
1.	For over a decade, Congress has included in the appropriations for the U.S. Fish and Wildlife Service’s (“Service”) resource management budget a spending cap on the amount the Service can spend on petition findings, listing determinations, and designations of critical habitat (the “listing budget”).	Undisputed.
2.	For the previous five fiscal years (“FYs”), the annual spending caps for listing and critical habitat were: \$20,476,000 for FY 2017; \$18,818,000 for FY 2018; \$18,318,000 for FY 2019; \$20,318,000 for FY 2020; \$20,767,000 for FY 2021; and \$21,279,000 for FY 2022.	Undisputed.
3.	Although there has been a slight increase in appropriations from FY 2019 to FY 2020 that brought the Service back up to FY 2017 spending levels in FY 2020, that amount did not buy the Service as much in FY 2020 as it did in FY 2017. Nor are the smaller increases between FY 2020 to FY 2022 very meaningful given the increasing costs of business, such as statutory pay raises and	The statements in paragraph 3 constitute Defendants’ characterization of appropriations and spending amounts which speak for themselves.

	step increases, as well as more expensive employee benefit packages, and now serious inflation.	
4.	In July 2016, the Service developed and published for notice and comment its Methodology for Prioritizing Status Reviews and Accompanying 12-Month Findings on Petitions for Listing under the Endangered Species Act. <i>See</i> 81 Fed. Reg. 49,248 (July 27, 2016). The Methodology explains how the Service prioritizes outstanding 12-month listing petition findings, and it informed the development of our first multi-year Workplan and subsequent Workplan updates, including the current one, the National Domestic Listing Workplan for FYs 2022-2027.	The statements in paragraph 4 constitute Defendants' characterization of a final agency document which speaks for itself; Plaintiff does not dispute that the Service published its Methodology in the Federal Register in July 2016
5.	The current Workplan outlines the Service's planned workload for FYs 2022–2027, and includes roughly 310 actions.	The statement in paragraph 5 constitutes Defendants' characterization of an agency document which speaks for itself.
6.	In the Service's Region 8, the Pacific Southwest Region, there are currently 31 12-month findings scheduled for FYs 2022-2027.	Plaintiffs are not able to independently verify Defendants' characterization of Region 8's workload but otherwise do not dispute the facts set forth in paragraph 6.
7.	Of those actions, the Sacramento Fish and Wildlife Office ("SFWO"), the lead office charged with making the Temblor legless	Plaintiffs are not able to independently verify Defendants' characterization of the Sacramento Fish and Wildlife Office's

1		lizard finding, is responsible for making or	workload but otherwise do not dispute the
2		participating in 18 listing actions. These	facts set forth in paragraph 7.
3		include eleven yet-to-be completed 12-month	
4		findings, with SFWO serving as the lead	
5		office for seven of the findings and assisting	
6		other lead offices for four findings.	
7	8.	In addition to these 18 listing actions, the	Plaintiffs are not able to independently
8		SFWO classification program and staff are	verify Defendants' characterization of the
9		responsible for de-listing and down-listing	Sacramento Fish and Wildlife Office's
10		actions, five-year reviews of listed species,	workload but otherwise do not dispute the
11		and development of recovery plans. The	facts set forth in paragraph 8.
12		SFWO is the lead office for one potential de-	
13		listing and the assisting office for one	
14		potential down-listing. Further, the same	
15		classification staff are currently responsible	
16		for the completion of 83 statutorily required	
17		five-year reviews of listed species between	
18		FYs 2022 and 2025, and lead for the	
19		development and finalization of 14 recovery	
20		plans through FY 2024.	
21	9.	From October 20, 2020 (the date of	Plaintiffs are not able to independently
22		Plaintiff's petition) through June 15, 2022,	verify Defendants' characterization of the
23		the Service completed the following	Service's past listing actions but otherwise
24		domestic listing actions: 43 not-warranted	do not dispute the facts set forth in
25		12-month listing petition findings, 38	paragraph 9.
26		proposed listing rules, 20 proposed 4(d)	
27		rules, 26 proposed critical habitat rules, 14	
28			

1	final listing rules, 6 final 4(d) rules, 20 final	
2	critical habitat rules, 3 withdrawals, 1	
3	emergency listing rule, and 2 new warranted-	
4	but-precluded 12-month listing petition	
5	findings. Frazer Decl. ¶ 21.	
6		

7 Respectfully submitted this 25th day of July 2022,

8 /s/ Margaret A. Coulter

9 Margaret A. Coulter (CA Bar No. 304708)

10 Email: mcoulter@biologicaldiversity.org

11 Lauren A. Parker (DC Bar No. 1670885)

12 Email: lparker@biologicaldiversity.org

13 *Pro hac vice*

14 Jason C. Rylander (DC Bar No. 474995)

15 Email: jrylander@biologicaldiversity.org

16 *Pro hac vice*

17 CENTER FOR BIOLOGICAL DIVERSITY

18 1411 K Street NW, Suite 1300

19 Washington, DC 20005

20 Telephone: (202) 961-4820

21 *Attorneys for Plaintiff Center for Biological*
22 *Diversity*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Response to Defendants' Statement of Undisputed Facts with the Clerk of the Court for the United States District Court for the Eastern District of California by using the CM/ECF system, which will serve a copy of the same on the counsel of record.

/s/ Margaret A. Coulter